

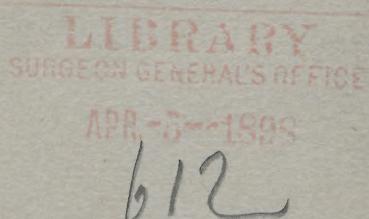
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BY

WALTER CHANNING, M. D.
Boston, Mass.



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MEDICAL EXPERT TESTIMONY IN THE KELLEY
MURDER TRIAL.¹

By WALTER CHANNING, M. D.

It has been so often the province of the alienist who has testified as an expert in a trial to find cause for criticism in the way his testimony has been presented and utilized, that it is with a feeling of the greatest satisfaction the writer can say that in the case under discussion there could be no just ground of complaint. On the contrary, the experts' opinions were received with respect and consideration, and exerted an important and considerable influence in determining the final issue of the case.

The precedent of the proper method of introducing medical expert testimony in a murder trial, which this case may be instrumental in establishing, is of such value and interest that the writer will undertake to present a somewhat detailed account of the medico-legal aspects of the case.

The circumstances of the homicide were these: Shortly before two o'clock on the afternoon of April 16th, 1897, the dead body of Joseph A. Stickney, cashier of the Great Falls National Bank of Somersworth, New Hampshire, was found on the floor of the bank. Death had been undoubtedly produced by numerous blows on the head, some of which had crushed the skull, and by cutting the throat from ear to ear, evidently with a razor; a black-jack or billy was found near the body, which accounted for the blows on the head.

The vault had been rifled of nearly all the gold and silver it contained, amounting to several thousand dollars, and a valuable package of stamps, the property of the postmaster, was missing. No bonds or stocks had been molested.

Suspicion quickly pointed toward Joseph E. Kelley, a young man who had lived for several years in Somersworth and the

¹ Read at a meeting of the Boston Medico-Psychological Society, December 16, 1897.

presented by the author,

town of Berwick across the river. Three days afterwards he was arrested in Montreal and made a frank and full confession of the crime.

The cashier of the bank was an old and somewhat feeble man, seventy years of age, respected and esteemed by those who knew him, and his brutal murder aroused the indignation of the community and a strong feeling of hostility toward the murderer.

During the summer following the crime, experts were engaged by the counsel for the prisoner to examine into his mental condition, which led to the employment of others by the State for a similar purpose. This procedure was rendered peculiarly necessary in the case under discussion, as the law of New Hampshire specifies that "where insanity is set up as a defense to an indictment, the jury must be satisfied beyond a reasonable doubt that the killing was not produced by mental disease."

The experts selected by the State were Drs. Edward Cowles, George F. Jelley and the writer, and they made several prolonged examinations of the prisoner in the county jail at Dover. Under ordinary circumstances it would have been desirable to have visited him singly, as well as in a body, thus seeing him under the most varied conditions. The prisoner's counsel, however, preferred usually to be present themselves with one or all three of their own experts. This resulted in a combination investigation, which, while it eliminated the disadvantage of a possible personal bias on the part of the investigator, did away with the accuracy and exactness resulting from a close and continuous investigation along one single line. Often a man in the presence of a dozen other men is quite unlike the person wholly alone with one other man. In a multitude of counsellors there is sometimes safety for him who is seeking to *escape* the consequences of their counsel, as well as for him who seeks to gain advantage from it.

The situation with Kelley then was this when the experts for the State first saw him: he had previously seen his counsel and some of the experts employed by them a number of times, and had acquired a familiarity with their system of probing and sounding him for evidences for and against mental unsoundness. While he could form no idea of their precise purpose, it was possible for him to gain a facility in responding, and it happened

that he had the ready and quick perception which materially helped him in accomplishing this purpose. Thus it was that we found him ready and alert in answering innumerable questions, and the writer felt that he had so many times rehearsed most of what he had to say, that without in any sense feigning a part, he had come to use instinctively whatever his agile wit enabled him to pick up as something coming quite spontaneously from himself. It appeared that he was able to manufacture lies where truth would not serve, and he had become a composite of Kelley plus, not only his counsel and the alienists he had seen, but newspaper reporters, detectives, fellow-prisoners and most of the persons he had seen since his arrest. It will thus appear evident that it was no easy task to analyze satisfactorily such a mental conglomeration, especially in the presence of a large number of both friendly and hostile inquisitors.

The better to understand the man we were called on to thus examine, it becomes necessary to describe his appearance physically and mentally. His measurements were as follows: Height, 5 ft. 4½ in.; weight, 170 lbs.; length of head, 190 mm.; maximum width head, 146 mm.; minimum width head, 122 mm.; horizontal circumference head, 555 mm.; length face, 132 mm.; width face, 120 mm.; width between eyes, 26 mm.; length orbit, 34 mm.; length nose, 56 mm.; width mouth, 49 mm.; width jaw, 115 mm.; cephalic index, 76.31+; length left ear, 59 mm.; width left ear, 30 mm.; angle left ear, 50°; length right ear, 58 mm.; width right ear, 31 mm.; angle, 50°. The palate (see Plate I) was a little higher and longer in proportion to the width than normal. Parallelism of the alveolar processes was a striking characteristic. Teeth were regular and comparatively sound.

While the measurements of the head reveal no striking abnormality or asymmetry, there was a slight flattening on the right side in the parietal region and parietal depression of a congenital character on both sides. About the middle of the left frontal bone there was a small cruciform scar, and under it a depression rather smaller than the end of the little finger, which could be seen as well as felt.

The type of head was medium dolichocephalic; in appearance, however, brachycephalic, but not in reality, the pompadour cut of the hair making appearances deceptive; thus the hair

standing up straight in front two or three inches high made the forehead appear higher than it really was. The accompanying outlines of the head give an approximately correct idea of its contour (see Plate II).

The hair was dark and rather coarse.

The eyes were brown and tending to the almond type. The skin was clean and smooth. The arms and legs were well proportioned; the hands rather large for the body. The general appearance was of physical symmetry and the roundness and plumpness of the young boy or girl. The color was bright and fresh and ruddy enough to suggest perfect health.

Coming now to a description of what we may call "psycho-physical characteristics," the facial expression deserves special mention. No correct idea can be formed of it from the accompanying picture (see Plate III). There was something attractive and winning, almost fascinating, about it, which was very much enhanced by a smile lighting up the whole face. It was easy to get an impression of ingenuousness and even innocence, in spite of his evil deeds, as one looked into his face. There were no furrows, no suggestions of hardship, suffering or sorrow in any facial lines; nothing but a broad, flat, round visage with the happy look of untroubled youth. The mouth was rather small, the lips thinnish, the lower jaw somewhat heavy. A subtle look of cunning now and then could be detected; but it was the negative character of the expression, as far as any betrayal of emotion was concerned, that struck the writer's attention. There were no evidences in the face that anything in life had so far reached down below the surface. There were indications of coarseness and lewdness to be observed on a very close inspection, but not to a sufficient degree to mar the general effect of good-natured boyhood.

As Kelley faced the various experts and others grouped around him, most of them note-book in hand, it might be thought that the situation would have been an embarrassing one, considering the gravity of the situation for him, but the embarrassment was on the side of the experts, rather than on Kelley's side. He carried himself with such self-complacency and answered all questions with such ready frankness that for some time it seemed as if he must be playing a part, with a view to creating an impres-

sion favorable and helpful to his own case. It was of course possible for him to have adopted some definite line of action, supposing that he was bright enough to have reasoned it out, which would have presented indications of some form of insanity. While he never at any time actually feigned specific symptoms, it looked a little at first as if he had seized on certain salient points, which he lost no opportunity of bringing into the foreground. And the probability is that he saw that the inquiry was directed to the finding out of a particular kind of data, and he thought he would give us all we wanted, and so his story grew and grew, being a mixture of truth and fiction. Yet as time went on it was evident that he followed no definite plan in what he said, and often (from any point of view he could have had of his own) he made admissions more injurious than helpful to his case.

Without reproducing here in detail much of what was elicited in our examinations, attention may be properly called to some of the principal points which, if later proved to be true, would have a positive value as evidence of mental weakness; while on the other hand, if shown to be false, would militate against such a theory.

First may be mentioned his account of an uncontrolled tendency to steal money and articles of little or no value from his early youth up to the time of his final arrest. He stole a watch and chain when he was about ten years of age; money from his father and from his employers, as well as various articles from them. He stole a tent, which he used in some woods near where he lived and for the larceny of which he was sent to the reformatory; articles at the reformatory; small sums of money from the hotels where he was employed for nearly three years shortly before the crime, as well as numerous small and cheap articles, such as hair brushes, tooth brushes and so on. The money he took from guests' bags, the hotel cash-drawer, the cigar stand, and the safe. There were several features of this pilfering from hotels which deserve notice, the first being the smallness of the amounts taken; the second, the cunningness of execution, so that it was not found out; and the third, that the money was not spent on drink and women, but saved and put into the bank with other money earned; and the fourth, that he kept a record of all the

money he stole, meaning to pay it back when he was twenty-five, a statement to be immediately explained.

Second may be mentioned his statements about his having a contract with the devil, beginning when he stole the watch, about the age of ten, and to expire when he was twenty-five. He never attempted to thrust this devil story into his conversation, but was ready to detail it if encouraged to do so. He had both seen and talked with the devil, he said; though there was evidence that he resorted to fiction in describing him, it appeared probable that he believed a portion of what he said. He frankly confessed that he had been brought up to believe in the conventional devil, but this one was different. He had a dark complexion; eyes like drops of water; dark hair streaked with grey, and a deep bass voice. When asked how tall the devil was, he thought it an immense joke to say, "as tall as you"; he could not help dropping into cheap or vulgar buffoonery when occasion offered. At our different interviews he mentioned categorically, though with constantly added details, what the devil said and how he behaved. It was most difficult, in fact impossible, for the writer to get at Kelley's real idea about the devil. The thing that was the most genuine and had some hold of him was his compact with the devil, which, as already mentioned, was binding to a certain time. He honestly believed in a personal devil, and thought he was in his power. As to how he looked and behaved, he made so many statements that it was easier to believe he was lying, than that he had actual delusions and hallucinations. There was without doubt something in the devil story, but just how much importance to give to it could not be determined during the examinations.

Third, he had had three attacks of somnambulism.

Fourth, he had had syphilis and at various times immoral relations with women.

Fifth, he never drank to excess.

Sixth, though he was very amiable, hail-fellow-well-met, and was generally liked, he had no intimate friends or comrades except a respectable girl with whom he "kept company." As a result of this peculiarity he was able to conceal his constant and curious thefts and his other bad practices for years; even his sweetheart did not receive his full confidence.

Seventh, the way he committed the crime, and his relation to it, was most strange and unusual, and became more unnatural each time that he talked of it. He seemed to actually delight in telling about the murder, and was never happier than when he was narrating its most terrible details. He no doubt had long thought of robbing the bank, and had taken a room opposite for the purpose of watching what went on. Not long before the murder he had stolen a pistol which had been found in his room, and he was in trouble about it, but such details did not upset him. A few days before the murder he went to Boston and bought a false moustache, black-jack, chloroform and straps. While he told no one of what he intended to do, it cannot be said that he took extreme care to conceal his movements. The things that had almost always diverted suspicion from him were his reputation of being good-natured and inoffensive, and his having had no intimate friends or pals to betray his wrongdoing, and had he had the shrewdness to realize his advantage in these respects and exercised ordinary self-control and judgment, the crime might never have been discovered. That he was lacking in these qualities the evidence later to be referred to makes especially clear.

With the greatest gusto he related how he watched the bank at the noon hour on the first day he made the attempt to rob it, to see the female assistant cashier go out, leaving the cashier alone. How he then went to the bank in a partial disguise, intending to pass himself off as a detective, his plan being to tell the cashier that a gang of "crooks" intended to "crack the safe," having already connected wires with it, which he would locate if the cashier would take him to the safe. By this means he would gain access to the safe, and have a chance to assault the old man at the same time. He failed in the accomplishment of this plan, because the assistant cashier had not gone out to dinner, and he went away so hurriedly that he left a bundle on a window seat in the bank entrance containing some of his outfit for the robbery. Later, when he was in an oyster saloon, he remembered that he had left his bundle and went back for it.

The murder was committed on Friday. During our examinations he insisted on it that his first visit to the bank was made on the previous Wednesday, and that all the time between Wed-

nesday night and Friday morning up to half-past ten o'clock was a blank to him. It was, however, proved by evidence presented at the trial that it was Thursday, and that on that day he appeared in every way as usual. He undoubtedly was lying about his condition on Thursday, having for some reason got the idea that it would be advantageous to his case to prove that he had periods of unconsciousness, of which this would be a most desirable illustration.

On the fatal Friday he wrote in his room or office an order for some stamps belonging to the postmaster, which were in the bank safe, watched until he saw the old cashier was alone, then with his black-jack, razor, chloroform, straps, disguise, and a pillow-case stolen from his boarding-house, repaired to the bank shortly after twelve o'clock. Some of his things were done up in a paper parcel. It is a question in the writer's mind whether he contemplated murder. Like a boy, he had armed himself to the teeth, but that alone would not be proof in such a fellow as Kelley that murder was intended. What he wanted was the money in the safe. Whether he went as far as to plan the details of a murder and just what he would do afterwards is, in spite of considerable evidence to the contrary, open to doubt. Even what he said himself is misleading. He asserted that he did intend to commit murder. Once he said he thought of it in his office; another time he said it was on his way across the street to the bank. But these answers were made in response to leading questions and cannot be too implicitly relied on.

Arriving at the bank, he handed the old cashier the order for the stamps. They were promptly given him through the window, and not, as he had probably expected, through the door in the wire partition between the front and back part of the room. His next move was to ask the cashier to take his package and keep it until the next morning. That brought the old man to the door in the partition, and then it was that he felled him to the floor. Just what went through Kelley's mind as he rained the blows with his black-jack on the defenseless cashier's head can never be known. He says himself: "He opened the door and I struck him. When I struck him the first blow he fell right to the floor. Then I kept on striking him as hard as I could. Well, when I struck him I felt blood on my face; it was

like sweat. Then I took my razor out of the case and cut his throat." This description of what would ordinarily be the very climax of horror, and from the narration of which one would suppose almost any criminal, however hardened, would shrink, Kelley delivered with care and deliberation, and with an air of pleased satisfaction, as if he felt sure of the sympathy of his auditors.

The cashier being disposed of, he took a little money out of his (the cashier's) pocket-book and the bank keys out of his pocket, and locked the outside door of the bank. Next he proceeded to rifle the safe of the gold and silver, putting all but a few dollars into the stolen pillow-case, also the package of stamps. Then he threw away in the bank two or three of the things he had brought with him, donned his disguise and prepared to leave.

At this point he apparently became frightened, and his presence of mind partially deserted him. His own explanation was that he saw through the glass panel of the bank door the face of the devil, who was holding the handle of the door and grinning at him. This so upset him that he turned to a window to escape, but looking around again he saw that the devil had gone. Then he went to the door, but was too frightened to unlock it, so he smashed the heavy plate glass with his foot, got through the opening thus made, hurried down the stairs, and made his exit from the building.

Such is in brief the account of the crime as given by Kelley up to the time of leaving the bank. His subsequent movements, which are of some medico-legal importance, can best be considered in connection with the evidence.

Eighth. A point to which special attention should be called was his conception of the difference between right and wrong, and other moral distinctions. His lack of any feeling of remorse for his crime, or any realization that it was a thing of which he should be ashamed, has already been referred to. He was, perhaps, not proud of it, but he did believe it to be rather a creditable performance. He said himself in detailing his conversation with the devil: "I was glad I had killed Mr. Stickney. I felt good and was tickled to death." Then he went on to say: "I had no reason for thinking I had done a good thing. Think (now) I had done wrong. Sometimes not sorry

I did it. It will benefit some people. There is no one dies but somebody grows better or worse. I have always noticed in families one grows better or worse. . . . I have come to this conclusion from observation. When I die people will grow worse, because they are all good now. I would like to feel sorry for killing Mr. Stickney, but I can't; I can't make myself believe so." Later in the same conversation he said: "I think no murderer is ever forgiven. I have asked God to wipe this thing all out, but he won't. It does no good to pray. I shall not be forgiven until January 16, 1899, when I am twenty-five years old (when the devil compact expires). God will not help me any now. The devil has got hold of me. . . . I can't excite myself to feel any compunction. I don't feel for anything nor for anybody."

When talking with him on other occasions he said "he knew it was a dirty, cowardly deed," but he never felt or showed any feeling of sorrow. He seemed to realize this and to regret it, and said he'd rather feel bad than the way he did. "I want some one to pray for me to be sorry. I am too happy now. . . . I am going to plead not guilty because the lawyers want me to, but I am guilty. I had rather be hung than go to prison, because this (the latter) would be paying fifty cents on the dollar, and I had rather pay my whole debt." He said at the close of one long interview: "Doctors, lawyers and reporters are all alike, they are all professional liars." Another time he told us he knew what we were there for: to make him out insane, but he was not insane.

Ninth, mention should be made of Kelley's poetry. He was told by his counsel the last day we visited him that we would like to hear some of his poetry, so with the greatest good nature he went to his cell and brought out a blank book into which he had copied a number of his poems. He read them standing up, in a clear, self-confident schoolboyish tone of voice, pleased rather than otherwise with the effect they produced. The poetry-writing began three months before. One day he said he found that the words in a letter had a tendency to rhyme with each other, and since then he had had no difficulty in making poetry. How much value should be attached to poetry written as this was while he was confined in prison as a noted criminal, perhaps somewhat exhilarated and with a sense of his self-importance, it is difficult to determine. Especially so, it may be said, as he

was pressed to write poetry, if we may judge from his letters, and for this reason he may have applied himself more diligently to the task than would otherwise have been the case. In a letter under date of July 18th, 1897, for instance, he says: "I have written four poems, and my lawyers want me to write a lot of them." In estimating the significance of the poetry-writing, these circumstances must be taken into account.

The following samples will give one a fair idea of the kind of poetry Kelley seems to have written:

DREAMS OF BOYHOOD DAYS.

As he sat there alone,
Thinking of the years gone by,
Of the happy home and mother,
From his heart there came a sigh.
The sisters and the brothers,
The shaded lover' lane,
The old seat by the running brook,
He ne'er shall see again.

The roses in the garden,
The cerious nightly bloom,
All is still and fragrant
'Neath the silvery shining moon.
The twinkling little stars,
The beautiful northern lights,
These sights he ne'er shall see again
On balmy summer nights.

On the door stoop by his side
With the one he loved so dear,
He spoke in pleasant whispers
That none but she might hear.
The swaying elm trees,
The waving fields of grain,
The little girl he loved so much
He ne'er shall see again.

No more the golden sun will see,
No more the rising moon,
Nor the white sails on the ocean,
Nor the screeching big black loon.
The earth is still the same,
The waters ever run;
But the poet's life is ended,
His work on earth is done.

(JOSEPH E. KELLEY.)

THE 20th CENTURY GIRLS.

When girls are little babies,
They cry, they scratch and bite;
And papa has the pleasure
Of rocking her at night.

She is a little darling,
A precious little child;
But when she cries and hollars
She makes poor papa wild.

When at the age of sweet sixteen,
She still has her childish ways,
It's strange that she remembers them
Most all her live long days.

She sits down in your lap,
She bites, she hugs, she kisses;
Me thinks at times our sweet sixteens
The nursing bottle misses.

(JOSEPH E. KELLEY.)

WILL.

Dover, N. H., Aug. 16, '97.

Hung by the neck until dead
Is very easy to say,
And this is to be my fate
In January, on the sixteenth day.
Yes, the sentence has been passed,
Dead is all future hope;
The people of Strafford County
Have got me on a rope.
I do not wish to make a will,
For I have few bequests to make;
In the shape of bloody weapons,
Which I give for remembrance sake.
The razor which cut the throat
Of the cashier of the bank
I give to James A. Edgerly,
A lawyer of high rank.
He is after all such things;
A kind of souvenir crank.
His office is at Somersworth,
Quite near the savings bank.

To my junior counsel, Mr. Ryan,
I give the small black-jack
With which I struck the kind cashier
A well-directed crack.
The straps and chloroform
You may equally divide;
They led me to the awful crime
By which the cashier died.
As my counsel and advisors,
I trust that you will see
That after I am dead,
Dissected I shall be.
Bancroft of Concord may have my body,
If to experiment he feels inclined.
He then can tell the people
All about my mind.
The last thing that I ask of you,
Let no friend see my face;
But remove me from the prison
To Doctor Bancroft's place.
And after he is through with me,
Cremated I wish to be.
If justice is only satisfied,
It's all the same to me.

(JOSEPH E. KELLEY.)

THE CONVICT'S PRAYER.

A prisoner on an autumn day
On bended knees to God did pray:

O God! in Thy mercy and holy love,
Send down Thy blessing from above.

Give me sorrow for every sin,
That Thy love and friendship I may win.

Like the fading, dying flower,
Thou cans't save me by Thy power.

Help the lawyers in my case
By Thy holy loving grace.

Although they lie, and against Thee sin,
They are working cheap, for I have no tin.

And while they sit about the hearth,
In time You can give them a nice warm berth.

Help the doctors, of Thee I beg,
For they are pulling the county's leg.

If they much more my caranum drum,
They will put the county on the bum

But, good Lord, have mercy, and lay not up a feeling,
It's the best and safest way to do the sin of stealing.

Have mercy on the ladies who practice salts and pills,
And show them how to do like men, to send in nice big bills.

Forgive the sheriff, of Thee I pray,
And help him on election day.

And if a vote or two is bought,
Make his life—as jailor very short.

As high sheriff he will pass,
Though he has the manners of a big jackass.

His wife, God bless her, I don't think,
Has driven him crazy, to rum and drink.

God bless the attorney-general, and the county attorney, too,
And should they go to Heaven, don't place them in the zoo.

God bless the judges, so solemn and calm,
And keep them from spiritual and bodily harm.

God bless the jury, one and all,
The young, the old, the large and small.

Give them grace to consider the case,
And on facts and evidence their opinions base.

God bless us when we are laid at rest,
And take us to the land of blest—

The land that ever is the same,
We ask of Thee in Jesus' name.

Amen.

Kelley's letters written in the jail, of which the writer has examined about twenty, are similar in tenor to his conversation. They show only a fair amount of facility of expression, but are

written carefully and in a handsome hand. They were probably all seen before being mailed, which may account for their correctness and carefulness. They were nearly all written to members of his family, and chiefly to a sister. He refers in several of them to his relations with the devil and of the impossibility of his doing right while under his influence.

In a letter written May 14, 1897, he says: "I am a child of the devil, and you need have no fear for what I have done. I am not as bad as you think, and know God knows the trouble I am in. I expected to live until I was fifty, and half of my life was for the devil and half for God."

In a letter written on the 30th of April, 1897, he says: "I don't feel as though I have done anything, but of course I have, but it does not make me feel as bad as I ought to feel."

May 22, 1897, he writes that "Life on earth was hell to me, but here I am at ease and happy. . . . About five years ago my Guardian Angel told me to go to see Bishop Brady and he would drive the devil off, and now I am going to write him and ask him to bless me and I shall feel safe."

In several letters he says he is very happy, and that "prison is heaven to what the outside world is," meaning probably that he feels that he will be prevented in prison from yielding to the devil's influence and doing wrong.

There is one letter written about three weeks before the murder which appears to be in every way a common, plain, direct letter. In several of the letters severe remarks are made about the experts' visits. One dated August 4, 1897, is written to Dr. Bancroft, and is as follows: "My lawyers lied to me; don't come any more, for I am all right. You are a man that likes to see justice done, and so am I. Will be in Concord in October and will tell you something good at that time." (He refers to going to the State prison when he speaks of being in Concord in October.)

In estimating the value of the letters as evidence, it must be remembered that they were written while he was under the watchful observation of his counsel and a number of experts, and he might (had he been feigning) have been cunning enough to make use of them to express his irrational ideas. It is more probable, however, that he expressed himself as he really felt, and hence they tend to corroborate the statements he made in conversation.

Such is a partial report of the investigation at the jail into Kelley's mental condition. At its close the writer was strongly impressed with the feeling that he was not playing a rôle for the

occasion; that he was *himself*, and only acting out what was natural to him. He had always lied and with some cunning trimmed his sails to the blast of the moment. It was natural for him to be shifty and tricky, and he was not above taking advantage of subterfuge. Still his desire was to be frank and straightforward, as no doubt his counsel told him it was best for him to be, and his lying was justified, in his opinion, when it would make the truth of his statements more apparent. On the whole he stood the ordeal wonderfully well. Probably no feigner could have gone through so many long days of severe and rigid cross-examination without at least partially breaking down. At the end, as at the beginning, he was the same pleasant, happy, superficially sharp, self-reliant boy. He had always had plenty of egotism, which no doubt the notoriety of the crime had materially augmented, still it was far from having the quality of obtrusiveness and aggressiveness characteristic of the so-called "paranoiac."

It was apparent that he was not the subject of any form of insanity, but it was equally apparent that he was quite unlike the ordinary young man of twenty-three. While he had a quick, wide-awake way of taking things in and some degree of so-called smartness, he had no maturity of judgment. His lack of moral sense was, however, the most striking indication he presented of an undeveloped mind and character. The conclusion was inevitable that he was a degenerate with congenital or acquired criminal instincts.

How far he could be held responsible for the crime was at the end of the examination a difficult matter to determine satisfactorily, and fortunately it was not necessary to give an opinion until all the evidence had been presented at the trial.

Kelley was the same happy, good-natured boy when he appeared in the court-room that he had been in the jail, and was evidently pleased to be the observed of all observers. He was neatly and tastefully dressed, and healthy and attractive looking. Each step in the proceedings he followed with interest, and was on the *qui vive* to give his counsel hints or advice, a thing he could easily do, as he sat in the bar close beside them.

He listened carefully to the simple and direct yet forceful and convincing opening address of the counsel for the State. It

was arranged that the jury should visit the scene of the murder, and in accordance with the law of New Hampshire Kelley went with them. He rode to the bank from Dover in an electric car with the lawyers, some of the experts, newspaper men and sheriffs, and he was the most cheerful and unconcerned member of the party. He acted as master of ceremonies at the bank, showing the exact spot where the old cashier met his death. His non-chalance and total lack of appreciation of his crime and its consequences, combined with his jocose yet pleasant and polite manner on this occasion, were something incredible in the man of sound and normal mind.

The evidence presented by the State proved easily and conclusively that he was guilty of the murder. Its medico-legal interest consisted in the account of his strange actions both before and afterward. These actions showed recklessness, carelessness and bungling, and a great lack of judgment. The brown paper he used to do up some of his things in, and in which he probably intended to wrap up the stolen money, he borrowed in a conspicuous way of a local tradesman, and then he left it in his haste at the bank door after he had committed the murder. There was little difficulty in tracing this paper directly to him. The order for the stamps, already spoken of, was in his own handwriting, and he left that in his haste on the bank counter. The stolen pillow-case, also already spoken of, he slung over his shoulder, walked out into the street with, and then took through streets where he was seen (though not recognized because of his disguise), to an orchard where he was seen. Here he left it covered with his coat, and after changing his hat he went to his boarding house, calmly eating a little dinner. He then hired a horse and buggy, ostensibly to go fishing, and returned to the orchard (being seen by several persons) to get the money, putting it into a dress-suit case, after which he again returned to his boarding house and paid his landlady out of the stolen money part of the sum he owed her. His next move was to drive some miles to the town of Milton, where he put his horse in a stable (the horse showing evidences of rapid driving) and bought a new coat and hat, leaving his old hat in the livery stable. He enquired if there was any one who sold glasses in the town; went to a hotel, where he met an old acquaintance;

took a train bound toward Canada; on the train kept a good deal to himself, yet spoke to several persons, some of whom he had previously known. He gave the stolen stamps to a brakeman to mail for him, paying him liberally for doing so. They were directed to "L. J. Sullivan, Montreal," the letters "L. J." being the initials of Sullivan the pugilist reversed. The stamps were carelessly done up and mailed in such a peculiar way that the postmaster decided they had been stolen and would not forward them.

It is impossible to minutely follow each step in Kelley's movements in the limits of this paper. It must be stated, however, that by a series of what appeared to be rather haphazard changes from one train to another, he finally turned up in a little Canadian village named St. Justin de Newton, telling a very plausible story (about coming to Canada on account of trouble he got into by selling liquor) to the keeper of an inn where he lodged. On the Monday, three days after the murder, he bought a woman's dress and bonnet of the innkeeper, paying an exorbitant price for them, which he wished to use for a disguise, he said, to go to Montreal to see his wife who was there, and he proposed to bring her back with him. The dress was that of an old woman and entirely out of keeping with his apparent age, but that did not seem to trouble him, and he took the train for Montreal, going straight to a house of ill-fame. All such houses had been warned of his possible arrival, and the police being notified, he was immediately arrested and before the next morning had confessed the crime. After taking the officers to the place where he had thrown away some of the money, he returned to Somersworth without a requisition, and was his usual pleasant, congenial self on the journey. Such are the facts relative to his conduct after the murder, presented and proved by the State.

He could not well have pursued a course which would furnish more clues, once suspicion turned toward him. Instead of covering his tracks, he left them visible up to the time he changed, as if by sudden impulse, from one train to another. He was temporarily safe perhaps on Sunday when in the small country inn, and his best chance lay in keeping himself hidden from sight, but the reckless, hare-brained boy in him impelled him to go to a city and have a spree. He could not have more adroitly

thrown himself into the hands of his pursuers than by visiting a house of ill-fame, his reputation being just shady enough to suggest his doing such a thing. Disguising himself as he did illustrated his cunning and recklessness, but it only aided him in walking directly into the lion's mouth.

Carefully analyzing all that he did after the murder, the conclusion is forced on one that he acted with little judgment and foresight, threw away such opportunities as he had for escape, and stupidly and without reason allowed himself to be caught.

The prosecution having put in their case, the defense next outlined in their opening what they would rely on to prove the claim of insanity. Said Mr. Ryan, who made the opening address:

You have heard the story of the crime and a partial account of this young man's life. You have noted the many peculiarities of this remarkable homicide.

To these facts and circumstances we desire to especially call your attention, and that of the physicians, as showing in a measure his mental condition. The boy was born in Amesbury, Mass., on the 15th day of January, 1874. He was the fourth of a family of eight children, all living.

The prisoner was born a healthy, well-developed child, and grew up to the age of four years a bright, happy, laughing child, until a fatal day in September, 1878, while at play with another child upon what is known as a carriage brow, he met with an accident. The place from which the boy fell was a distance of from 12 to 14 feet from the ground. He was picked up unconscious and so remained for two or three days.

A witness will say that he went to the place where the accident happened and picked up a board with a common tenpenny nail driven through it. He says the nail was rusty, and he noticed that there was blood upon at least a half-inch of it. The nail looked as if a small piece of it had been recently broken off.

During the period that the boy was confined in bed from the injury he suffered from what are commonly called fits or convulsions, and he continued to have fits up to about the age of 13 or 14.

When he was 15 or 16 years of age he used to say that the devil was here or there, or in his room or somewhere all the time. He did not care for money at all. He one time took two \$5 gold pieces, and one he gave to a boy and the other he battered with two stones. He was 10 or 12 years old at that time. Another time he took a gold watch and chain from the house and gave it to a boy for a New York pictorial newspaper.

He was sent to the reformatory because he took so many things that did not belong to him. One day he was passing along the road with two other boys and he saw a man in a field at work. He had a revolver in his pocket and he took it out and fired twice at the man. He did not

know the man, and when he was asked why he did it he would make no reply. Once he shot himself in the arm.

He seemed to be always afraid, and kept a sword in his room to defend himself with, and always carried a revolver in his pocket. He wrote a letter to his father while he was at Grant's Hotel, stating he was going to build a hotel on a hill in Amesbury; that it was to cover two acres of land and be the finest hotel in the country, and that he was going to entertain all the nobility of England in it. When he was in the Concord prison he wrote a letter in regard to an elephant, in which he said: "You done a good job on the elephant. I was watching you. He tried to crush you up against the wall, but you knocked him down with the hammer and put the shoe on him in good shape."

We shall have a number of witnesses from Amesbury who will testify as to his having fits and his peculiarities when he played ball, and that they regarded him as a foolish boy.

It will appear that as he was released from the reformatory he went to Somersworth and there undertook to obtain employment. We shall show you conclusively that this prisoner never had the capacity to hold any position of any kind or description that could not have been held or filled by a boy of 10 years.

The above is in substance, as taken from the Boston *Herald*, a portion of the opening for the defense. It was closed by an appeal to the jury on the nature of the responsibilities which they assumed, as the issue to be determined was one involving life and death.

The life at stake being Kelley's own, it was both interesting and important to notice how he behaved during his counsel's address, when for the first time he was hearing how his case was to be defended. Sitting, as he did, side by side by the experts, there could not have been a better opportunity to watch him. Now, as always before, however, he was the same pleasant, cool, jocose Kelley. He was quick to catch any little point and preserved a critical, observant attitude, not indifferent to what was going on, but absorbed in it. Yet all the time it was impossible to discover that he had the slightest conception of the magnitude of the crime or his relation to it. A *Herald* reporter very accurately pictured him in the following paragraph:

"He listened with great attention to what Mr. Ryan said, and when references were made to his devil he looked toward the *Herald* reporter and laughed. He also smiled frequently at Mr. Nason, counsel for the prosecution, who sat beside him while the opening was being made. When the statement was finished

Kelley told Mr. Ryan he thought it was a pretty good speech, much better than that delivered by Mr. Nason, and he said he did not think he got such a hard roast in it after all.

" Kelley's composure was not a bit disturbed by the generally interesting events of the day. He was as cool when the detectives were telling about how he acted at the time he was arrested for murder as when Mr. Ryan gave information to the jury about the thefts of his boyhood days. Sometimes he bit his lips at the talk his attorney made about insanity, but there were no other signs of nervousness."

The opening of the counsel for the defense occupied the closing portion of the afternoon session of the third day of the trial, and it had considerable weight as corroborative evidence of Kelley's peculiar mental condition, because it furnished an explanation of doubtful points in his account of himself, and further made it more possible to understand his boy-man make-up and his stunted moral nature. Though of course the statements made in the opening had not been proved to be true by evidence duly passed upon by the court, yet enough data had already been unofficially obtained by the writer to warrant him in assuming their probable accuracy.

Of great corroborative value also was Kelley's conduct in and out of court, especially during his counsel's address. It was in every way consistent with his conduct in the jail.

Thus little by little enough cumulative proof had been collected to focus and define the writer's opinion of Kelley's condition, which had been only partially arrived at after the examinations in the jail.

Upon the evening of the same day the counsel for the State and their experts held a conference, and later the experts of both sides conferred together. While in some respects they differed in their opinions, they were all prepared to go as far as to say that Kelley's brain was imperfectly developed, and that, in the full sense of the word, he was not responsible.

Such being the unanimous opinion of the experts, the counsel for both sides decided that Kelley should the next morning, at the opening of the court, retract the plea of "not guilty" and substitute that of "guilty." This he did in a neat little speech addressed to the court, delivered with a cool, self-possessed

manner and in a clear voice. The gist of what he said was that he would plead guilty provided he could have an extension of sixty days. What he meant by asking for this amount of time was, that if he was sentenced to be hung, the law of New Hampshire delaying the execution of sentence for one year, the sixty days extra would carry him to the time when his compact with the devil would expire and he could die a free man!

Kelley's plea of guilty made a remarkable change in the method of legal procedure, as what up to that time had been a jury trial became a hearing before a judge! A jury was no longer necessary under the law of New Hampshire, guilt being admitted. The responsibility of determining the degree of guilt is placed on the judge, and this depends on whether deliberation and pre-meditation can or cannot be proved.

It was a striking and never-to-be-forgotten moment when the jury, the supposed bulwark of justice and personal freedom, was dismissed, and on the judge alone was left the weight of deciding between life and death. It was, however, a weight more apparent than real, for the question resolved itself into one of two degrees of guilt, and the first was already, inferentially at least, excluded by the agreement of counsel that the prisoner should plead guilty because of his peculiar mental condition.

A portion of this, the fourth day of the trial, was spent in the introduction of evidence relative to Kelley's infancy and youth, corroborating the statements made in the opening of the defense and adding to their force by fuller details. It appeared that he had been a normal child up to four years of age, when the accident occurred resulting in an injury to the brain. As already stated, the seat of this injury is distinctly visible as a depression in the left frontal bone. After the accident there were epileptic convulsions up to 13 or 14 years of age. There was accompanying moral perversion and strange conduct noticeable enough to lead to his being called "foolish Joe," "Kelley's fool," and so on.

He stole persistently, unblushingly and openly. His father said in his testimony: "Beat all boys I ever see; would steal money wherever he see it." He shot himself, as stated by the doctor who treated him, simply to create a sensation. He ran off and wandered away from home on numerous occasions.

Altogether he was a troublesome, erratic boy, and finally after his arrest for larceny his father got a doctor to examine his head to see what was the matter with him, and the doctor told him it would not hurt him to go to the reformatory. He was always good-natured and got along well with people. At the jail, after the murder, when the father saw him he appeared just as he always had. He claimed as a boy to have seen the devil in his room, and there was a place in the wall where the plastering was broken in his attempts to strike the devil.

The mother testified that he thought the devil was after him when he was about twelve years of age. Both mother and sister told him the stealing was wrong, and the sister told him to pray, which he did, but he could not help the stealing. The mother, sister and brother testified to his walking in his sleep. Another sister testified that he drew well, and she asked him to draw houses, but he would always make pictures of the devil in red clothes with a five-tined fork held up in the air.

The doctor who attended him when he shot himself in the arm at the age of sixteen said in his testimony: "From his look and manners he seemed to me unsound. I thought he was regarded below par. He seemed exalted then. He appears very much the same now as then."

Testimony was presented which showed that during the year before the murder, Kelley had undertaken schemes which were of a more ambitious and erratic character than at any previous time. He started a summer hotel on less than three hundred dollars, which was largely stolen money deposited in the savings bank. This enterprise failed. He talked about starting a newspaper and evidently had a serious intention of doing so. An erratic undertaking was an advertising scheme by means of a megaphone, through which he cried various merchants' wares from the top of a building.

These references to the evidence presented by the defense are sufficient as illustrations of its general tenor, and help us very materially to understand Kelley's mental status.

MEDICAL TESTIMONY.

The medical testimony was presented at the close of the direct evidence for the defense. It was arranged that all of the six

experts should be called in succession, the first three being those for the defense. Those who have had occasion to testify under the ordinary conditions with a jury gazing in twelve different directions with a fixed, puzzled and stony stare, and opposing counsel intent on developing two diametrically opposite points of view, will readily perceive that the present situation was a far different one. The jury was pleasantly conspicuous by its absence. The counsel were sitting harmoniously side by side, and the experts could address themselves to the judge freely and in extenso, the hypothetical question, that most misleading and inadequate of forensic makeshifts, being allowed for once to slumber in silence. The pleasure and satisfaction of being able to try at least to say directly and simply on the witness-stand to an intelligent court just what one thought, it is hard to describe in words.

Dr. Charles P. Bancroft, the first expert for the defense, said that in his opinion Kelley's mental condition was one of arrested development due to an injury received upon his head in childhood. He thought the evidence showed that the prisoner was born healthy and continued a normal child until the day he met with the accident. That at that time he received such an injury to the brain as resulted in an improper, or rather prevented the subsequent normal development of the brain cells, and that there had been a consequent and corresponding failure in normal mental growth. He was a child in intellect and moral characteristics. He had many of the impulses and instincts of the adult, but his judgment for the carrying out of these plans was that of a mere child. His moral was more deficient than his intellectual capacity. Moral perversion was one of the earliest symptoms noticed. Next to the epileptiform attacks it was the striking characteristic of his early life and the one feature that made his management problematical. Next to moral obtuseness the most remarkable characteristic was a defective judgment, an inability to compare things properly, to discern the fitness of things, all of which suggests a general all-round deficiency of the higher intellectual processes. Coupled with this intellectual incapacity was an abnormal egoism, and an impulsiveness such as is characteristic of earliest childhood. Kelley never seemed capable of profiting by experience. This inability to exercise healthy judgment, to profit by the second sober thought, to make nice moral distinctions, and this rash impulsiveness that led him to childishly undertake the most absurd schemes that captivated his fancy, all indicate a generally arrested development of mind such as we understand is included in the term imbecility. The case would seem to be one of acquired or traumatic imbecility. Although an imbecile, he was by no means dull or stupid.

His perceptive faculties were unusually bright. But this brightness is evanescent rather than continuous. Back of and underlying this superficial elasticity of mind is the deficiency of judgment already referred to, the inability to maintain continuous exercise of the attention so essential to success anywhere, and a moral obtuseness which at one moment leads him to maintain a virtuous ideal and at the next to indulge in some moral excess.

Dr. Thomas Waterman, the second expert to be called, testified that he thought Kelley's responsibility very largely diminished, but whether absolutely or not he was not quite certain, but thought he would know in time. He regarded him as a case of arrested or defective brain development, and thought the expression that Dr. Bancroft had used, "high-grade imbecile," was expressive of his condition. He was exhilarated to a certain extent, and perhaps had an uncontrollable impulse to rob the bank and kill the cashier, or the killing of the cashier may have been incidental. "Question. He was not of sound mind at that time? Answer. He was not of sound mind; his responsibility was very largely diminished, and perhaps entirely so. I can't feel absolutely certain about his entire responsibility. Q. Could he form a deliberate and premeditated purpose as you would form? A. No, certainly not in that way. He doesn't have the judgment." On cross-examination witness said he thought the crime was probably the product of a diseased mind. Being asked to explain what he meant by probably, he replied that he said "probably" because in such a case he would want to observe it for months.

Dr. Wm. A. Gorton, the third expert for the defense, testified that he regarded Kelley of limited mental development, due probably to the injury of the brain received when he was a child. His condition on the day of the murder was the same that it had been for several years, and he is at present in a state of mental unsoundness. His trouble is not curable. It is a so-called degenerative trouble which is almost certain to go from bad to worse, showing more and more apparent evidence of mental degeneration. He did not have the capacity to carry a deliberate and premeditated purpose into effect as a sane person would have done. He did not have the capacity to resist an impulse in any sane sense. On cross-examination Dr. Gorton said that the first thing you would look for in a feigner would be any manifestation of insanity of an ordinary type. One of the things a feigner always does is to feign some well recognized form of insanity: to be stupid, or maniacal, or to go about and refuse to say anything. In Kelley all that was entirely absent. "I talked to him as I would to any one else about the crime. He gave a full account of it without any hesitation whatever, concealing nothing, as far as I could find out, which bore on his responsibility for it. My own experience with feigners has been that when they feigned a delusion it was for the purpose of excusing them from a crime which they had committed, and they have sought to throw the responsibility upon the delusion instead of on themselves. In this case the picture was exactly

reversed. The prisoner claimed that the devil, under whose guidance he had been, had absolutely nothing to do with this crime; that he alone was responsible." Dr. Gorton further testified that the prisoner did not have complete aberration of the mind, but arrest of mental development, an all-round arrest of development, and while he has left in him various impulses to do wrong and a certain amount of capacity to plan wrongful acts and conceal them, he has not the judgment and moral perception which would enable a person of sound mind to restrain them if the impulse to do them was once conceived.

The first expert for the prosecution was Dr. Edward Cowles. He was called immediately after Dr. Gorton. He testified that Kelley was the subject of limited responsibility. This was explained or described by the fact of his having an imperfect mental development; an imperfect development of a few parts of his mind. That he had epilepsy from five to fourteen is sufficient to account for a certain degree of the mental degeneration that appears in the ordinary observation of the man as he is seen here. The injury to the head probably accounts for the epilepsy. Some parts of his mind did go on to develop from the age of four through his youth, and in some degree perhaps most parts, but not all. The parts of a man's mind in which the defect appears can be explained in this way: he must have some perception of things going on around him; he must have memory; he must then have the power to reason and form judgments about what he remembers, and then he should have control of these—complete, effective normal control of his mental operations; then he should have normal development of the moral sense of right and wrong. In this case the prisoner has quick perception, he is alert and bright; he sees what is going on around him, perhaps to a greater degree than the average man. He has a good memory, but he lacks the essential power of control. He does form judgments, and of course has notions of things, and he does reason. But when he comes to motives his moral sense is decidedly defective and limited. . . . He does have natural affections and some feeling of regard for others, but that is imperfect and does not control his conduct. When he comes to act he acts upon his desires and impulses very largely, though with some reasoning about it. . . . He is gentle and amiable, . . . and he does not have the vicious traits that give him the desires and impulses to do very wrong things. . . . Because he is a person of rather good traits of character primarily, his impulses have not led him to some of the conduct that would put him out of relation with people about him. . . . From his impulse to petty thieving as a child, and in other ways, he has developed a good deal of sharpness and brightness for carrying out his ideas, which carry him through by his appearance on the surface. His thefts and his schemes for getting money have become larger as he has grown older, but he has shown his defect in not having the capacity to plan well and in not controlling his ideas sufficiently to form good judgments. The premeditating to do this deed first as a theft and then with a final impulse to commit the crime is a natural outcome of the

rather complicated condition already described. And the crime itself being so foreign to his general character and the quality of his mind, it is indisputably an evidence of want of reason and capacity to plan and conceive such a thing. His responsibility is limited in that way, rather than limited by what would be technically called insanity. It is more a limitation of responsibility that characterizes the criminal than an insane person, but in attempting to draw the line the difficulty arises that there is in the background the condition of disease which we have to consider: his epilepsy which has affected his nervous organization has given him an imperfect development and the crime has resulted.

Dr. George F. Jelly testified that he considered Kelley childish and erratic, though possessed of a great deal of mental acuteness. His moral perceptions are blunted; his ability to control his desires and impulses is blunted. . . . The case is one of limited responsibility on account of impaired mental development, which prevents him from exercising the power of premeditation and of deliberation. To that degree he is irresponsible. "I have been much impressed," said Dr. Jelly, "in watching him here, to notice his lack of reserve. I sat by him during most of the trial and was struck very much by the lack of concern which he showed after having plead guilty to the charge of murder, sitting drawing pictures, making careless and cheerful comments; and also last night when he shed tears, not because of his situation, but because he thought we had slighted him in regard to his poetry. He seemed more impressed by that fact—that we thought lightly of his poetry—than that he was accused of murder, or the fact that he had confessed murder and was liable to hang. These things are in line with impaired mental development and with that diminished responsibility which I believe exists in this case."

The writer was the last of the six experts called. He went over somewhat the same ground as those who had preceded him, and said he thought there was a defect in Kelley's brain which had resulted in mental instability and weakened power of resistance. His responsibility was limited as a result of the brain impairment. He thought there would be progressive degeneration and eventually complete mental break-down. He did not think that he possessed the capacity to form a premeditated and deliberate purpose to the degree that a sane man would.

This closed all the testimony in the case. The court established the degree of murder as that of the second degree, this being in New Hampshire a thirty years' sentence to the State prison, and the trial was at an end.

In seeking to make a diagnosis of Kelley's condition the conclusion is forced upon one that he belongs to the great class of degenerates. The physical signs presented by themselves somewhat correspond to what we should expect to find in a big,

healthy boy. There are few anomalies, or what could be correctly called stigmata, unless we class facial expression as showing itself in muscular co-ordination as physical. *There is a lack of development to some extent physically in proportion to age.* The body has not outgrown the early teens. It has not matured fast enough. There are, however, no marked asymmetries or departures from the average. The physical signs are negative rather than positive, yet taken in connection with the mental stigmata have as much value as if they were more striking and obvious. *An undeveloped type may have as great a significance as an over-developed or an anomalous type.* As Hirsch¹ has well said: "In consequence of the disturbances of development in degeneracy, the quintessence of the malady is to be sought in the disproportion in which the mental factors stand to one another." So it may be said of the physical factors, which must be taken into consideration in connection with the mental. While alone they may have only a doubtful value, combined with the mental they may serve to bring out or to accentuate details which together go to make up the picture of degeneracy.

The mental stigmata in Kelley's case were obvious and striking, yet the physical signs helped to make clearer the disproportion in which the mental factors stood to each other, and so filled in and completed the picture.

Hirsch quotes Morel as dividing degenerates into four classes, the first embracing persons in whom there are no particular anomalies, but who are characterized by a so-called nervous temperament. The second class includes those persons who, while their intellectual powers are unimpaired, display a decided disturbance of their feelings and impulses, and consequently great defects and perversity in morals. The third class contains imbeciles whose mental weakness is limited to the intellect, so that the instincts hold sway over the understanding; and the fourth class, idiots, in whom the whole mental development is extremely low. Hirsch very properly calls attention to the fact that any classification is largely arbitrary, as one class imperceptibly shades into another, still such an attempt is of assistance in defining our ideas in a case like Kelley's. He approximates to the second class, though we could not say his intellectual

¹ Genius and Degeneration, by Wm. Hirsch, p. 122.

powers were wholly unimpaired. We would, however, say that the greatest disproportion existed between the intellectual and moral factors, that there was a decided disturbance of the feelings and impulses, and great defects and perversity of morals.

In conclusion attention may be directed to various points of medico-legal interest suggested by this case, a discussion of which would be quite beyond the scope of this paper. 1. The value of an examination of a criminal to determine his mental condition in the presence of a large number of persons is doubtful and uncertain, and may not in itself be sufficient to accomplish the desired object. 2. Each expert should be allowed to examine the prisoner alone. 3. In a medico-legal case the time of the trial should be extended until the experts have had every opportunity to form an opinion. 4. It would further the ends of justice and save expense to the State if the experts of both sides could have a conference before the trial, in order that they might come to some mutual understanding or formulate a joint opinion. 5. A conference being out of the question before the trial, a conference during the trial would be the next best thing. 6. It would add to the dignity of testifying in court if experts would at least endeavor to pursue such a course. 7. The best way for the expert to express his opinion is directly to the court. The clearness, directness and reliability of his testimony are largely enhanced by this means. 8. The hypothetical question is admirably calculated to befuddle juries; it stimulates hair-splitting on the part of counsel, and obliges doctors to make fools of themselves. The truth of this statement was abundantly proved in the present case, where, there being no hypothetical question, the expert was able to leave the witness-stand feeling that he still had some self-respect remaining and had not unwittingly stultified himself in giving his opinion. 9. A more searching inquiry into the subject of degeneracy and the mental status of degenerates is desirable. 10. Should experts define responsibility? Can they say in court a man is partly responsible? Would it be better in testifying not to attempt to draw a line between degrees of responsibility? Medically and informally the writer sees no objection to doing so. In the case at issue the prisoner was not apparently the subject of a specific form of insanity, yet he was deficient mentally and to a degree which interfered with his

complete responsibility. Did he have mental capacity enough to exercise in a sane sense the powers of deliberation and premeditation? was the question the court asked each expert. If not, he could not be responsible. But is a man who is not responsible a sane man? Fortunately these questions were not discussed, and the punishment was justly made to fit the degree of responsibility.

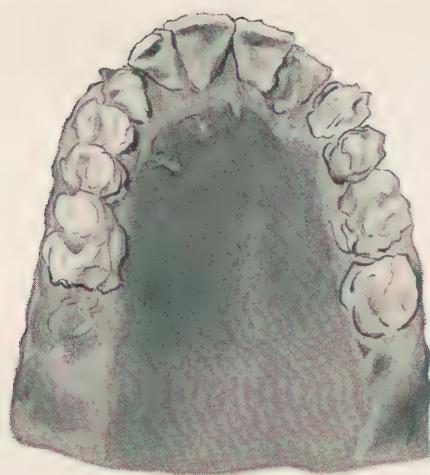


PLATE I.



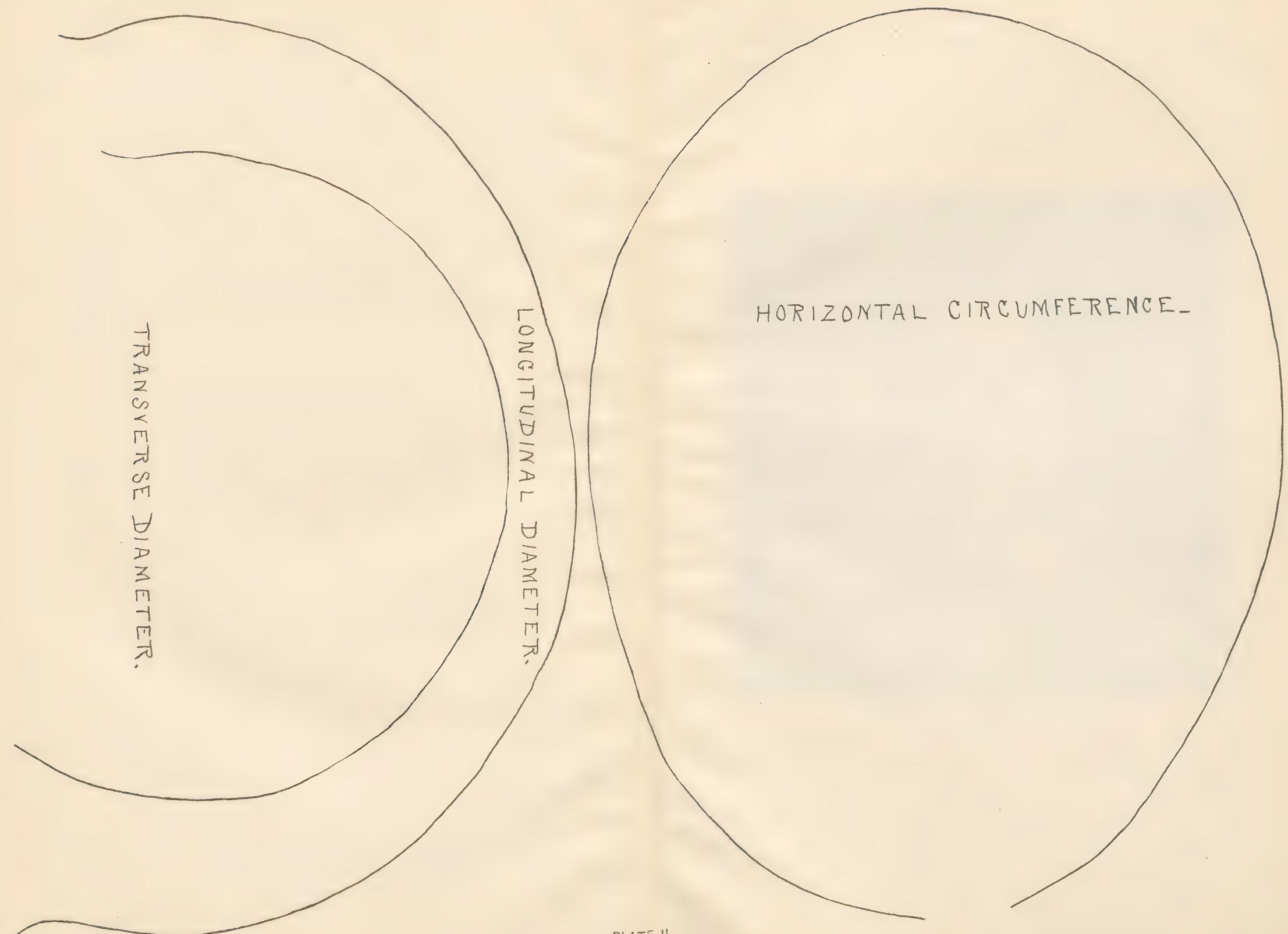




PLATE III.—PHOTOGRAPH OF KELLEY.

